

**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER**

UNITED STATES OF AMERICA,)	
Complainant,)	8 U.S.C. § 1324a Proceeding
)	
v.)	OCAHO Case No. 97A00116
)	
SPRING & SOON FASHION INC.,)	Judge Robert L. Barton, Jr.
d/b/a Y PLUS S CORPORATION,)	
d/b/a Y PRUS S CORPORATION,)	
Respondent.)	

PREHEARING CONFERENCE REPORT AND ORDER
(February 18, 1998)

As previously arranged with the parties, a telephone prehearing conference in this case was conducted this morning. INS Assistant District Counsel Mimi Tsankov appeared for Complainant, and Raymond Aab, Esq., appeared for Respondents.¹ A court reporter was present in my office to record the conference, and a transcript of the same will be prepared. The purpose of the conference was to address, among other things, the issues raised in this case, including the issue of successor liability, the need for discovery, and the potential for settlement. As a court reporter was present to record the conference verbatim, this Report and Order will not summarize the content of the entire conference. Instead, this Report and Order notes the deadlines that were set and summarizes my rulings during the conference.

Regarding the knowing hire allegations made in Count I of the Complaint, Ms. Tsankov stated that sworn statements given by the employees named in that count provide evidence of Respondent's state of mind. Mr. Aab said he does not have copies of those statements, and Ms. Tsankov said she has no problem with providing Respondent with the statements. I stated that Complainant should produce those sworn statements for Respondent within the next couple of weeks.

I discussed with the parties a number of factual questions that might help decide whether

¹ At the outset of the conference, I noted that Mr. Aab's written Notice of Appearance, served on September 24, 1997, only states that he represents Respondent Spring & Soon. However, during the conference, Mr. Aab stated that he represents Respondent Y Plus S Corporation, d/b/a Y Prus S Corporation, as well as Spring and Soon.

Respondent Y Plus S, d/b/a Y Prus S, is a mere continuation of Respondent Spring & Soon for purposes of determining whether Y Plus S should be held responsible as a successor corporation for any violations of the Immigration and Nationality Act that Spring & Soon might have committed. Particularly, I highlighted the following questions for the parties to keep in mind when conducting discovery:

- When did Spring & Soon cease operating as a business?
- Has Spring & Soon formally dissolved? If so, when?
- Were there any other stockholders and/or directors for Spring & Soon besides Mr. Sung?
- Are there any other stockholders and/or directors for Y Plus S besides Mrs. Sung?
- What was Mrs. Sung's role in Spring & Soon? Was she an owner or part owner, did she have and/or share managerial authority, was she an employee, etc.?
- What is Mr. Sung's role in Y Plus S? Is he an owner or part owner, does he have and/or share managerial authority, is he an employee, etc?
- Were there any other managers for Spring & Soon besides Mr. Sung?
- Are there any other managers for Y Plus S besides Mrs. Sung?
- Did Y Plus S assume any of Spring & Soon's liabilities, including any of its contracts, when Spring & Soon ceased business operations?
- Did Y Plus S buy, take or otherwise assume control over any of Spring & Soon's assets, machinery, manufacturing equipment, office equipment, etc.?
- How many former Spring & Soon employees did Y Plus S hire? Approximately how many total employees did Spring & Soon have? Approximately how many total employees does Y Plus S have?
- How many former Spring & Soon clients now are Y Plus S clients? Approximately how many total clients did Spring & Soon have? Approximately how many total clients does Y Plus S have?
- Were different bank accounts opened for Y Plus S? Were Spring & Soon's bank accounts closed? If so, what was done with the money from Spring & Soon's bank accounts?
- Does Y Plus S engage in the same type of business as Spring & Soon?

I noted that the above questions do not comprise an exhaustive list of the issues that may have bearing on the successorship issue, but that they are important considerations for the resolution of that matter. The parties are encouraged to seek out other facts, in addition to the facts sought in the above questions, that will help determine this complicated and fact-oriented issue.

With the agreement of the parties, I set May 15, 1998, as the deadline for the completion of discovery. That means that all discovery, including requests for admissions, requests for production of documents, interrogatories and depositions must be completed on or before that date, and that any motions to compel discovery must be filed² by that date.³ Mr. Aab suggested that we have another telephone conference after the conclusion of discovery to see if the parties' positions have changed in light of the information obtained through discovery. Ms. Tsankov agreed to the proposal, and I stated that another telephone prehearing conference will be held after discovery is complete. A specific date and time for the conference will be arranged as the time for it draws closer. I deferred setting deadlines for other procedural events, such as the filing of preliminary witness and exhibit lists, and the filing of any dispositive motions.

In responding to discovery requests, if a party objects to a request, it shall state clearly the grounds of its objection. See 28 C.F.R. §§ 68.19(b); 68.20(e); 68.21(b) (1997). If a party asserts privilege as a ground for refusing to produce a document, in whole or in part, in response to a discovery request, the objecting party shall identify the document by title, author(s), addressee(s), and subject matter and shall describe why the document, in whole or part, is protected by the privilege. As provided by the OCAHO Rules of Practice and Procedure, 28 C.F.R. § 68.6(a), the parties shall not file requests for discovery, answers or responses thereto with the Administrative Law Judge at the time that they are served. However, when filing a motion to compel, a party shall include a copy of the disputed discovery requests and responses. A motion to compel discovery also shall include a certification that the movant has in good faith conferred or attempted to confer with the party failing to make the discovery in an effort to resolve the discovery dispute. See 28 C.F.R. § 68.1 (1996); Fed. R. Civ. P. 37(a)(2)(B). If a party fails to include such certification, the motion to compel may be rejected.

All requests for relief, including requests for an extension of time, shall be submitted in the form of a written motion, not a letter. A party seeking an extension of time is required to attempt to confer with the opposing party to secure that party's agreement to the extension before filing its motion for an extension and must state in the motion that it has done so. Motions for an extension of time shall be submitted prior to the due date of the submission and shall include a proposed order.

² "File" means that the document must be received in my office by the given date, not that it merely must be postmarked by then. See 28 C.F.R. § 68.8(b) (1997).

³ The service of discovery requests must be timed to allow the other party adequate time to respond, see 28 C.F.R. §§ 68.19(b); 68.20(d); 68.21(b) (1997), so that motions to compel, if they are necessary, may be filed by May 15, 1998.

Any rulings made at the prehearing conference that are not reflected in this Report and Order remain effective, even though they are not mentioned in this Report and Order. The transcript will serve as a record of those rulings. If either party objects to any part of this Report and Order on the ground that it does not accurately reflect the ruling at the conference, such objection shall be filed and served on or before March 4, 1998. Such objections should not be merely requests for reconsideration. Rather, they should be filed only if this Report and Order does not accurately reflect the ruling.

ROBERT L. BARTON, JR.
ADMINISTRATIVE LAW JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of February, 1998, I have served the foregoing Prehearing Conference Report and Order on the following persons at the addresses shown, by first class mail, unless otherwise noted:

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